

PUBLICATION

OFCCP Indicates Intent to Rescind Trump-Era Rule Expanding Exemptions for Religious Contractors

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With the new Biden Administration now in place, including the recent appointment of Jenny Yang as the new Director of the Department of Labor's Office of Federal Contractor Compliance Programs (OFCCP), government contractors can be sure that changes are on the way. While it is impossible to predict what all of those changes might entail, OFCCP has made its intent to accomplish at least one change very clear by publicly announcing its plan to rescind a recently adopted rule that expanded certain exemptions available for religious employers.

"Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption" (the Rule), is the last rule enacted by the Trump-era OFCCP. Effective January 8, 2021, the Rule expanded application of the exemption to anti-discrimination laws available to certain "religious" contractors and/or subcontractors by offering a much broader standard to determine what employers are "religious." Under the Rule, the exemption is available to any contractor and/or subcontractor that can show strong evidence that it possesses a "substantial religious purpose." To do so, the employer would simply need to show that they (1) are organized for a religious purpose; (2) engage in activity consistent with, and in furtherance of, that religious purpose; and (3) hold themselves out to the public as carrying out a religious purpose. Those contractors and/or subcontractors who can meet this lesser standard are protected under the Rule from claims of discrimination for employment decisions, such as hiring and firing, that are made consistent with the employer's sincerely held religious beliefs.

Since its adoption, the Rule has seen much opposition claiming, in part, that the Rule could be implemented in a way that would unlawfully limit employment opportunities for the LGBTQ+ community. As a result, several states and labor unions filed suit challenging the Rule in January 2021, just after its effective date.

Faced with defending these challenges, the OFCCP has now moved to stay further proceedings in two pending cases, explaining to each respective court that it "intends to propose rescission" of the Rule "in the near future." See *New York v. DOL*, S.D.N.Y., No. 1:21-cv-00536, Motion to Stay filed 2/9/21 and *Oregon Tradeswomen, Inc. v. DOL*, D. Or., No. 3:21-cv-00089, Motion to Stay 2/10/21.

While the immediate implications of this development are informal (i.e., it will take time for OFCCP to actually rescind the Rule through the notice and comment period), it is now clear that OFCCP no longer supports the Rule, meaning it is very unlikely that it will recognize the Rule in proceedings going forward.

If you have any questions on this topic, please contact the authors or any member of Baker Donelson's [Labor & Employment Team](#).